

Servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

August 8, 2001

Dear Xxxxx:

This letter is in response to your Consumer Complaint Form filed with the Illinois Attorney Generals Office dated March 28, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your Complaint, you have stated and made inquiry as follows:

On 03/25/01, I took my wristwatch to COMPANY (jewelry store) to have a link removed from the band. I was charged \$9.95 and \$.72 sales tax. When I suggested to the clerk and repair person sales tax should not be charged on labor, they said their computers were set-up to charge sales tax and that is all they could do and I would need to talk to the Manager, who was not in at that time. I purchased this watch at BUSINESS and while they reimbursed me for the total bill, they said sales tax should not be charged for repair services. The next day I went to COMPANY and talked to the Manager. He said they've had complaints on this in the past but it had been researched by their Legal Dept. in Texas and it is permissible to charge sales tax on repairs. I told him I thought they were in violation of Illinois sales tax law and I was going to the Attorney General. He said, 'Go ahead'. If you concur with me that COMPANY is systematically and knowingly violating Illinois sales tax law, please order them to take corrective measures.

As you know, Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act. The COMPANY should have used one of the first three methods of tax collection.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimus servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The COMPANY made an overcollection of tax by erroneously charging you Retailers' Occupation Tax when it should have collected Service Occupation Tax on its services. The COMPANY should have assessed your tax liability by one of the three formulas described above. The Illinois Department of Revenue has contacted the COMPANY inquiring as to its collection practices. Any refund of the overcollection made to COMPANY is between you and the corporation.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

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